

Election/Restriction

The Office Action states that “restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-11 and 22-25, drawn to a semiconductor device, classified in class 257, subclass 436.

II. Claim 19, drawn to a method of making a semiconductor device, classified in class 438, subclass 48.”

The Office Action further states that claims 12-18 and 20-21 link inventions I and II.

Applicants respectfully submit that claims 22-25, which are indicated as belonging to Group 1, were canceled by the preliminary amendment submitted on November 12, 2003, concurrent with the filing of the instant application. Accordingly, Applicants will assume that claims 22-25 are not intended to be part of the restriction requirement and will respond accordingly. If the Applicants have misinterpreted the Examiner’s intent, Applicants respectfully request clarification in a subsequent action.


Applicants provisionally elect with traverse to prosecute the invention disclosed in Group 1, claims 1-11. Applicants initially note that at least the requirement for election of species regarding Species I and II appears to be improperly drawn. Applicants respectfully disagree with the statement in the Office Action that “[i]n the instant case, instead of the method used in claim 19, the product of invention I can be formed without the straining step to conform the lattice constant of the base to that of the collector and emitter.” Applicants respectfully submit that the method recited in claim 19 provides an alternative method of forming the device, the method of fabrication of which is recited in claim 12, and is not a separate invention. Accordingly, the present election requirement for Species I and II is improper and Applicants request its withdrawal. Further, Applicants respectfully request that claims 1-21 be examined.

CONCLUSION

Should the Examiner have any comment regarding the Applicants' response or believe that a teleconference would expedite prosecution of the pending claims, Applicants request that the Examiner telephone Applicants' undersigned attorney.

Respectfully submitted,

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